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ATTORNEYS FOR APPELLEE:

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**IN THE
COURT OF APPEALS OF INDIANA**

))))))))))

No. 46A04-0802-CR-80

NAJAM, Judge

STATEMENT OF THE CASE

Michael G. Bonaventura appeals his conviction and sentence for Criminal Trespass, as a Class A misdemeanor, following a bench trial. Bonaventura presents two issues for review:

1. Whether the evidence is sufficient to support his conviction.
2. Whether his sentence is inappropriate under Indiana Appellate Rule 7(B).

We affirm.

FACTS AND PROCEDURAL HISTORY

On February 15, 2007, Lindsay Frazee (“Mother”) and her nine-month-old daughter, L.B., were residing at the home of Mother’s parents at 2925 Lothair Way in Michigan City. Bonaventura, the child’s father, was scheduled to have visitation from 9:00 a.m. until 4:00 p.m., with the exchange to be made through Harmony House. On the morning of February 15, Cheryl from Harmony House notified Mother that Harmony House was closed due to inclement weather and that Bonaventura instead would be picking the child up at the Frazee home. Bonaventura also spoke with Pat Frazee, Mother’s mother, about the altered pick-up arrangement and time. Between 10:30 and 11:00 a.m., Bonaventura phoned the Frazee home and said that he would pick up the child at 1:00 p.m. Mother initially agreed as long as Bonaventura returned the child according to schedule at 4:00 p.m. When Bonaventura told Mother that he would return the child after seven hours of visitation, she told him not to come and cancelled the day’s visitation.

Bonaventura arrived at the Frazee home around 11:45 a.m. despite Mother having told him not to come. Mother’s boyfriend, Brett Fairchild, was in the driveway

snowblowing when Bonaventura arrived. Fairchild told Bonaventura to leave, but Bonaventura refused. After observing the exchange between Fairchild and Bonaventura, Mother returned to the house and told her father, Thomas Frazee (“Grandfather”), that there was a problem. Grandfather called 911.

In response to Grandfather’s call, Officer Tobin Babcock was dispatched to the Frazee residence. Upon arriving, Officer Babcock observed a heated exchange between Bonaventura, Grandfather, and Fairchild while Bonaventura was standing by his car and Grandfather and Fairchild were standing in the garage. Grandfather asked Bonaventura to leave several times, but Bonaventura made no effort to do so. After Officer Babcock handcuffed him, Bonaventura lunged toward Grandfather and Fairchild. At that point, Officer Babcock placed Bonaventura in the police car. After speaking with Grandfather, Officer Babcock arrested Bonaventura for trespassing.

The State charged Bonaventura with criminal trespass, as a Class A misdemeanor.¹ Following a bench trial, the court found Bonaventura guilty as charged and sentenced him to 365 days on electronic monitoring. Bonaventura now appeals.

DISCUSSION AND DECISION

Issue One: Sufficiency of Evidence

Bonaventura contends that the evidence is insufficient to support his conviction for criminal trespass. When reviewing a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment

¹ Neither party has provided a complete copy of the charging information in the respective appendices.

and the reasonable inferences that may be drawn from that evidence to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. See id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

The State charged Bonaventura with criminal trespass, as a Class A misdemeanor. Criminal trespass is defined as follows:

(a) A person who:

(1) not having a contractual interest in the property, knowingly or intentionally enters the real property of another person after having been denied entry by the other person or that person's agent;

(2) not having a contractual interest in the property, knowingly or intentionally refuses to leave the real property of another person after having been asked to leave by the other person or that person's agent . . .

commits criminal trespass, a Class A misdemeanor.

Ind. Code § 35-43-2-2. Thus, the State was required to show, beyond a reasonable doubt, that Bonaventura either entered the real property of another or refused to leave the Frazes' property after having been asked to leave by Grandfather. See id.

Here, the evidence most favorable to the judgment shows that Bonaventura was scheduled to pick up his daughter at Harmony House. Because of a forecast for snowy weather, Harmony House was closed on the date scheduled for visitation, so personnel from Harmony House arranged for Bonaventura to pick up L.B. at the Frazee home at 9:00 a.m. and then, after a subsequent phone call to reschedule, at 10:30 a.m. Bonaventura later called the Frazes to say that he was running late, and the parties agreed for

Bonaventura to pick up his daughter at 1:00 p.m. But when Mother reminded Bonaventura to return L.B. by 4:00 p.m. as originally scheduled, he refused, saying he planned to keep L.B. for a full seven hours of visitation. At that point, Mother told Bonaventura not to come and cancelled the visitation.

Despite being told not to come to the Frazee home, Bonaventura arrived there around 11:45 a.m. to pick up L.B. Grandfather called 911 from the house and then went outside and told Bonaventura to leave. When Officer Babcock arrived, Grandfather was asking Bonaventura to leave, but Bonaventura was making no attempt to depart. We hold that the evidence is sufficient to show that Bonaventura knowingly or intentionally refused to leave Grandfather's home after having been asked to leave by Grandfather.

Bonaventura contends that the evidence is insufficient because he had a contractual interest in the Frazee home by virtue of his court-ordered visitation schedule.² But Bonaventura did not offer a copy of a visitation schedule into evidence, demonstrate that the court took judicial notice of a visitation order, or offer any testimony from the Harmony House personnel who altered the exchange location for Bonaventura's visitation. Bonaventura's argument that he had a contractual interest in the Frazee home

² We observe that Bonaventura's remedy for Mother's cancellation of visitation was to request the court to impose sanctions against her, not to take the child by force. Indiana Parenting Time Guideline Section I.E.6. provides:

A. Contempt Sanctions. Court orders regarding parenting time must be followed by both parents. Unjustified violations of any of the provision contained in the order may subject the offender to contempt sanctions. These sanctions may include fine, imprisonment, and/or community service.

* * *

C. Criminal Penalties. Interference with custody or visitation rights may be a crime. Ind. Code § 35-42-3-4.

amounts to a request for us to reweigh the evidence, which we cannot do. See Jones, 783 N.E.2d at 1139.

Bonaventura also asserts two related defenses to criminal trespass: (1) that he had a “fair and reasonable belief” that he was entitled to be on the Frazes’ property in order to visit with L.B., Appellant’s Brief at 11, and (2) that he made a mistake of fact as defined by Indiana Code Section 35-41-3-7. A “bona fide belief” that one had a right to be on the real property of another may defeat the mens rea requirement of criminal trespass. See Woods v. State, 703 N.E.2d 1115, 1117 (Ind. Ct. App. 1998); Olsen v. State, 663 N.E.2d 1194, 1196 (Ind. Ct. App. 1996). Similarly, under Indiana Code Section 35-41-3-7, “[i]t is a defense that the person who engaged in the prohibited conduct was reasonably mistaken about a matter of fact, if the mistake negates the culpability required for commission of the offense.” But Bonaventura’s contentions under both defenses require that we reweigh the evidence, which, again, we cannot do. See Jones, 783 N.E.2d at 1139. Thus, we conclude that the evidence is sufficient to support Bonaventura’s conviction for criminal trespass, as a Class A misdemeanor.³

Issue Two: Appellate Rule 7(B)

Bonaventura next requests that we review his sentence under Indiana Appellate Rule 7(B). Specifically, he argues that his sentence, while not the maximum punishment available, is excessive in light of the nature of the offense. Indiana Appellate Rule 7(B) provides that this court “may review a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is

³ In his reply brief, Bonaventura also makes a constitutional argument and an argument under Indiana Code Section 35-41-3-1. Because neither of these arguments was asserted in his appellant’s brief, the arguments are waived. See Clark v. Hunter, 861 N.E.2d 1202, 1211 n.4 (Ind. Ct. App. 2007).

inappropriate in light of the nature of the offense and the character of the offender.” But revision of a sentence under Indiana Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of both the nature of his offense and his character. Williams v. State, 2008 Ind. App. LEXIS 2526 at *28-*29 (Ind. Ct. App. Aug. 6, 2008). See Ind. Appellate Rule 7(B); Rutherford, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Bonaventura presents no argument regarding the inappropriateness of his sentence in light of his character. See App. R. 46(A)(8)(a); Ford v. State, 718 N.E.2d 1104, 1107 n.1 (Ind. 1999) (holding that the defendant’s “argument with respect to the review and revise provision of the constitution is waived for failure to state a cogent argument”). Thus, Bonaventura has waived review of his sentence under Appellate Rule 7(B). See Williams, 2008 Ind. App. LEXIS at *28.

Affirmed.

BAKER, C.J., and KIRSCH, J., concur.